

STATE OF ALABAMA)

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) CITY OF RED BAY  
FRANKLIN COUNTY )

MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL  
MARCH 20, 2006  
CITY OF RED BAY COUNCIL ROOM

The City Council of Red Bay met in a regular meeting on March 20, 2006 at 7:00 p.m.

Present and presiding was Mayor Pro-Tem Pat Hammock. Council Members present were Rayford Seahorn, Ann Wilkins, and Ricky Holland.

Absent were: Mayor Jeff Reid and Council Member Bobby Nelson.

Linda Holcomb, City Clerk, was present and recording.

Others present were City Attorney Brian Hamilton and Fire Chief Bud Strickland.

Rayford Seahorn led the Invocation.

Ann Wilkins led the Allegiance to the Flag.

Upon the recommendation of Fire Chief Bud Strickland, Rayford Seahorn made a motion to hire Wayne David Brand as a fire fighter for the City of Red Bay. Ricky Holland seconded the motion. Unanimously passed.

Fire Chief Bud Strickland reminded the Council concerning his request for a Junior Firemen's Program (under age 18). Attorney Brian Hamilton addressed the Council and said that he did not like the waiver system. Chief Strickland said that those interested would have to wait until they reached the age of 18.

Attorney Brian Hamilton addressed the Council concerning the March 3, 2006 reply from Attorney General Troy King's Opinions Division. He stated that at present the Articles of Incorporation for the Red Bay Water and Gas Board does not allow for a Council Member to serve on the Water and Gas Board. The Articles of Incorporation would have to be amended before a Council Member could serve on both boards legally. He said that he would forward a letter to the Red Bay Water and Gas Board requesting that they respond to the Council. A copy of the letter from the Attorney General's Office and a copy of Opinion #81-00581 are attached. Attachment A

Ricky Holland made a motion to pay the sewer operator presently employed by the Red Bay Water and Gas Department, directly from the City of Red Bay in the form of a payroll check – gross \$1000.00 (one thousand dollars) per month, with no benefits. Ann Wilkins seconded the motion. Unanimously passed.

Ann Wilkins made a motion to rescind her motion that was made at the March 6, 2006 meeting for vendors not to collect sales tax at Founders Fest. Ricky Holland seconded the motion. Unanimously passed.

Rayford Seahorn made a motion for vendors to collect sales tax at Founders Fest; he stated that this was fair to local merchants. Ricky Holland seconded the motion. Unanimously passed.

Upon the recommendation of Mayor Pro-Tem Pat Hammock, Rayford Seahorn made a motion to table the Rental Tax Ordinance that was presented to the Council, in order to give ample time to review it. Ricky Holland seconded the motion. Unanimously passed.

Ann Wilkins made a motion to accept the \$750.00 (seven hundred and fifty dollars) grant received from the Alabama State Council of the Arts, to be used for entertainment at the 2006 Founders Fest. Rayford Seahorn seconded the motion. Unanimously passed.

Rayford Seahorn made a motion to add Ross Cooper to the City's payroll as a part-time employee, on an as needed basis, to trim and cut trees for the City, with a pay rate of \$12.00 per hour. Ricky Holland seconded the motion. Unanimously passed.

Ricky Holland made a motion for the City to rent Ross Cooper's tree equipment at a fair rate. Rayford Seahorn seconded the motion. Unanimously passed.

Rayford Seahorn made a motion to purchase a cell phone and service for Mayor Jeff Reid to use for City business. Ricky Holland seconded the motion. Unanimously passed.

Rayford Seahorn made a motion to appoint Jacqueline Parsons to the un-expired term of Deloris Sparks on the Red Bay Education Committee. Ricky Holland seconded the motion. Unanimously passed. Deloris Sparks resigned the position due to being employed out of town and unable to attend the meetings. This term will expire February 15, 2010.

Rayford Seahorn made a motion to appoint Ralph Winchester to the expiring term of Floyd Davis on the Scope 310 Board. Ann Wilkins seconded the motion. Unanimously passed. Mr. Davis did not wish to serve again. This is a five-year term expiring April 2011.

Ann Wilkins made a motion to rescind the vote made at the February 20, 2006 meeting to appoint Ralph Winchester to the Industrial Development Board. Ricky Holland seconded the motion. Unanimously passed. Paul Winchester was serving the term in question until his death, and then the Council appointed Ralph Winchester to complete the term. However, members of the Industrial Development Board are

required to live inside the City of Red Bay. Ralph Winchester is not a resident of the City.

Mayor Pro-Tem Pat Hammock made the following announcements:

1. Anyone interested in applying for the open position on the Industrial Development Board to please come to City Hall and sign the list before 12:00 noon, March 29, 2006. This term will expire December 1, 2006.
2. The next regular scheduled meeting of the Red Bay City Council will be April 3, 2006 in the Red Bay City Council Room, 7:00 p.m.

Ann Wilkins made a motion to approve the bills, seconded by Ricky Holland. Unanimously passed.

Rayford Seahorn made a motion to approve the minutes of the last regular meeting held March 6, 2006. Ann Wilkins seconded the motion. Unanimously passed.

Rayford Seahorn stated that he had spoke with the Mayor and that the street sweeper is not working properly.

Ann Wilkins addressed Fire Chief Bud Strickland concerning the Fire Department's roll in cleaning the streets. Chief Strickland said that the Fire Department uses their water hoses to clean the street when necessary.

Ricky Holland made a motion to adjourn, seconded by Rayford Seahorn. Unanimously passed.

Pat Hammock

Pat Hammock  
Mayor Pro-Tem  
City of Red Bay

Linda B. Holcomb

Linda B. Holcomb  
City Clerk  
City of Red Bay

# McDOWELL & BEASON, P.C.

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JOE FINE  
OF COUNSEL

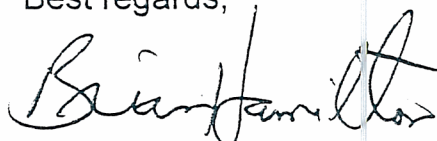
March 9, 2006

Hon. Jeff Reid  
Mayor, Town of Red Bay  
P.O. Box 2002  
Red Bay, AL 35582

Dear Mayor Reid:

Enclosed please find the Attorney General's opinion regarding service on the Red Bay City Council and Water and Gas Board. If you have any questions, please contact me.

Best regards,



Brian Hamilton

BH/jeb  
Enc.





STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

March 3, 2006

TROY KING  
ATTORNEY GENERAL

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable Brian Hamilton  
Attorney, City of Red Bay  
Post Office Box 818  
Russellville, Alabama 35653

Dear Mr. Hamilton:

This letter is in response to your request on behalf of the City of Red Bay. Your question is whether a person who was appointed to serve on the Red Bay Water and Gas Board ("Board") and who is later elected to the Red Bay City Council may continue to serve on the Water and Gas Board if the articles of incorporation for the Board do not authorize municipal officers to serve on the Board. Your request states that the council member is currently serving on the Board and on the city council.

The Attorney General is authorized to provide opinions to public officials and public entities with respect to their official duties that require immediate performance. ALA. CODE § 36-15-1 (2001). Opinions may not be issued for the purpose of reviewing actions that have already been taken. *Id.* Accordingly, this Office is unable to provide you with an opinion.

I can, however, provide you with a copy of a previous opinion issued by this Office that addresses a similar issue. A copy of the opinion to Honorable John B. Givhan, City Attorney, City of Andalusia, dated September 15, 1981, A.G. No. 81-00581, is enclosed for your review. That opinion stated that a council member is not eligible to serve on the board of directors of a water board if the articles of incorporation for the board had not been amended, as authorized by section 11-50-234 of the Code of Alabama, to provide for the appointment of municipal officers to the water board.

I hope this information is helpful. If you have any questions, please feel free to contact me.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/BFS  
Enclosure: As stated  
104354/89397

# OFFICE OF THE ATTORNEY GENERAL

81-00581



RBCC Minutes  
Attachment A  
March 20, 2006  
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CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

SEP 15 1981

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 834-5150

JAMES R. SOLOMON, JR.  
DEPUTY ATTORNEY GENERAL  
  
WILLIAM M. BEKURS, JR.  
EXECUTIVE ASSISTANT  
  
WALTER S. TURNER  
CHIEF ASSISTANT ATTORNEY GENERAL  
  
JANIE NOBLES  
ADMINISTRATIVE ASSISTANT

Honorable John B. Givhan  
City Attorney  
City of Andalusia  
P.O. Box 429  
Andalusia, AL 36420

Municipalities -- Utility Boards --  
Officers & Offices

Consulting engineer for city is not  
an "officer of the municipality" as  
term used in Articles of Incorporation  
of Water Board.

Council members in Andalusia not  
eligible to serve as Water Board  
Directors as Articles of Incorporation  
not amended subject to permissive  
enabling legislation.

Dear Mr. Givhan:

The Office of the Attorney General has received the opinion  
request of the City of Andalusia.

Your first question is whether Richard H. Cobbs, by virtue of  
an agreement to serve as a consulting engineer for the City, is an  
officer of the municipality within the meaning of that phrase as  
used in Articles of Incorporation of the Water Works Board of the  
City of Andalusia so as to prohibit his service on that Board.  
Your question is answered in the negative. It is the opinion of  
this office that "officer of the municipality" as used in the  
Articles of Incorporation of the Water Board clearly means an  
official of the City of Andalusia elected by the people.

Your second question is:

Can a member of the city council of the City of Andalusia, Alabama, be a member of the board of directors of the Water Board of the City of Andalusia?

This question is answered in the negative.

In 1943, the date of incorporation of the Board, officers of the municipality were, under Title 37, § 397, Code of Alabama 1940, (now 11-50-234) prohibited from serving on the board and the Articles so state. In 1956 Section 397 was amended so that officers of the municipality could be made eligible for appointment to the Board. However, no amendments were made to the original Articles of Incorporation. Nor are amendments required to be made. Water Works Board of City of Leeds v. Huffstutler, 292 Ala. 669, 299 So.2d 268, 1974 citing Buffalow v. State ex rel. Inabinett, 281 Ala. 132, 199 So.2d 672 (1967). It is, therefore, the opinion of this office that no council member of the City of Andalusia may serve as a Director of the Water Works Board.

I do hope that this response sufficiently answers your inquiry. If, however, we may be of further assistance, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK  
Attorney General  
By--



CAROL JEAN SMITH  
Assistant Attorney General

CJS:es